United States Court of Appeals

for the Second Circuit

PETITION FOR REHEARING EN BANC

76-1008

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1008

B P/S

UNITED STATES OF AMERICA,

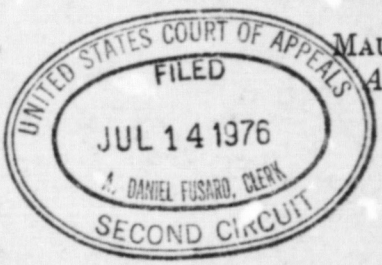
Appellant,

—v.—

SALVATORE ANNARUMO, FRANK ALTESE a/k/a FRANKIE FEETS et al.,

Appellees.

PETITION BY THE APPELLEE SALVATORE ANNARUMO et al. FOR REHEARING AND SUGGESTION FOR REHEARING *IN BANC*



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Preliminary Statement

On July 1, 1976, a divided panel of this Court (Clark, Associate Justice Ret., with Timber *C.J.* concurring; Van Graafeiland, *C.J.* dissenting) decided issues of great practical importance to the administration of Title IX of the federal Organized Crime Control Act 18 U.S.C. Sec. 1962(c).

Because we believe that the panel majority's construction of the provisions in issue, is at odds with the intent of Congress, and is unwise as a matter of policy, we respectfully petition the panel which decided this case for rehearing to reconsider that construction; and because of

the significance of this issue to the administration of criminal justice in this Circuit we suggest rehearing *in banc*, if necessary.

ARGUMENT

POINT I

The majority holding in this case has extended federal jurisdiction beyond all permissible bounds.

It seems quite evident from a reading of the Legislative hearing of Title IX that Congress never intended that the word "enterprise" as used in Sections 1961, 1962 would extend beyond legitimate businesses or organizations. See, S. Rep. No. 91-617, 91st Cong., 1st Sess. (1969); H.R. Rep. No. 91-1549, 1970 U.S. Code Cong. & Ad. News, 4007, 4032-4036; Comment, Organized Crime and the Infiltration of Legitimate Business: Civil Remedies for "Criminal Activity", 124 U. Pa. L. Rev. 124, 204-206 (1975).

The net result of the majority's holding is to credit the word "enterprise", intended by Congress to be synonymous with commercial business, parity with the term "conspiracy." (Slip op. 4638).

The majority view seemingly creates the mischief of extending the federal jurisdictional grasp over every minor and major criminal state-federal offenses. A view distinctly held abhorrent by this Court in *United States* v. *Archer*, 486 F.2d 670, 680 (2d Cir. 1973). See also, *Reivis* v. *United States*, 401 U.S. at p. 812.

The per curiam opinion of the majority seems to give no regard to legislative intent or to the "sensitive federal-state relationships and limited federal police resources

and the resultant transformation of relatively minor state offenses into federal felonies by mere geographic happenstance." (Slip op. 4637). This consideration should be specifically considered in light of the geographic pasture encompassing the Second Circuit.

The majority opinion states that three other Circuits had reached the same result (Slip op. 4634). We must respectfully disagree that the Ninth Circuit in *United States* v. *Campanale*, 518 F.2d 352 (9th Cir. 1975), *cert. denied*, 44 U.S.L.W. 3397 (January 13, 1976) squarely passed upon the issue at bar.

CONCLUSION

Appellee Salvatore Annarumo respectfully prays that he be granted a rehearing or for a rehearing *in banc* in which all of the effected appellees join with him.

Respectfully submitted,

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